DURBAN – At-Large Multi-Stakeholder Policy Roundtable
Monday, July 15, 2013 – 14:00 to 16:00
ICANN – Durban, South Africa

MATT ASHTIANI: Hello everyone.   Welcome to the At-Large Stakeholder Policy Roundtable. This is Matt Ashtiani for the record. Can I please remind all participants to speak slowly and clearly into the microphone and to state their name before speaking? Thank you.

RINALIA ABDUL RAHIM: Good afternoon everybody. My name is Rinalia Abdul Rahim. I'm one of the Co-Chairs of the Roundtable. My colleague Olivier Crépin-Leblond will join us shortly but we shall start in any case. Let me just start with an introduction in terms of why we're organizing this Roundtable. The new gTLD program has been launched and since then we've seen a number of consumer concerns arise.

Different communities have had to grapple with these issues in an almost ad-hoc or silo manner, and we would like to take the opportunity to actually step back, take a broader overview of the new gTLD program and try to take stock of the range of concerns that have come up regarding consumer and public interest concerns.

And we've invited colleagues from other community groups; the GAC – the Government Advisory Committee – as well as the Business Constituency as well as other colleagues from At-Large, basically to give some insights in terms of some of the issues that have come about. And

we know that the list is not complete and what we would like is to get more input around the table as well as from our friends who are listening, to also participate in a discussion to help us identify what other concerns exist from the public interest and consumer point of view.

And also whether or not there are policies and mechanisms to address these concerns, and whether these policies and mechanisms are adequate and what more can be done to address the user concerns and public interest concerns effectively. So we actually have a panel or lead discussants of about 10 people. It's a big panel. We've never had such a large panel before so it's quite a challenge. But we're quite excited because all the issues are quite interesting.

And in terms of how we've allocated the roles is that we've asked some people to address issues from a broad perspective. And so we have Peter Nettlefold from the GAC; he's the GAC lead on new gTLDs and he will provide the perspective of government on public interest as well as the public interest and consumer concerns.

We also have to provide consumer perspective. Holly Raiche, who is Chair of the At-Large Registrant Rights and Responsibilities Working Group, and also Board Member of Australian Communications Consumer Actions Network. And to compliment Holly, to provide perspective on Consumer Trust Choice and Competition is Steve DelBianco. He's Executive Director of Net Choice and Vice-Chair for Policy Coordination ICANN Business Constituency.

And to provide business users' perspective is Zahid Jamil, who is Executive Committee Member ICANN Business Constituency and

Member of the gNSO Council. These individuals on the left are going to provide broad perspective from the specific stakeholder groups. Then the discussants on the right – and they're arrayed at the end of this table – are going to address specific topics and concerns, and I'll address them one-by-one.

To present the intellectual property rights and IDN perspective is Hong Xue. Hong, can you raise your hand. Thank you. She's the Director of the Institute for Internet Policy and Law from Beijing Normal University and Member of the ccNSO Council. And then to provide the closed generics perspective is Evan Leibovitch, who is President of ISOC Canada and Vice-Chair of the At-Large Advisory Committee.

Someone who is not physically here but will provide input on indigenous groups' perspective we will see a video from Karaitiana Taiuru, who is Chair of New Zealand Maori Internet Society. And following KT, to provide the Geographic Names perspective is Olga Cavalli, who is the representative of Argentina to the Governmental Advisory Committee and Director of the South School on Internet Governance.

And from ICANN Compliance we have Maguy Serad, who is Vice-President of Contractual Compliance Service. And who will join us shortly because he is in another meeting is Tijani Ben Jemaa, who is Executive Committee Member of the At-Large Advisory Committee and Vice Chair of African Regional At-Large Organization, who will provide the perspective of the developing country.

And the way we're going to run this Roundtable is that every one of the discussants is going to have five to seven minutes. Next to me is Dev

Anand Teelucksingh, who is the strict timekeeper. When your time is up he will do something, and please do pay attention. I'm not sure what he will do. [laughter] And we will try to proceed with one presentation after the other. I know that's quite unconventional and I know you will want some interactivity, but we just want to see the real range of issues and then we'll discuss at the end of the presentations themselves.

So let's begin. The first presentation is from the perspective of the government on public interest and consumer concerns, Peter Nettlefold.

PETER NETTLEFOLD: Thank you Rinalia. And thanks everyone for coming along today. It's a great pleasure to be here. First I should apologise, I did have some slides prepared but I've been unable to get them off of my computer. So I'll just be speaking. I'm Peter Nettlefold, the Australian GAC Representative. I'm also Vice-Chair of the GAC and as Rinalia said, I've been asked to speak about a governmental perspective on public interest.

When Australia started to look at new gTLDs in terms of the early warning process we started to look at a range of issues. These included competition, consumer protection, geographic names, rights' protection and so on. We started to try and think if there were any broad themes that we could start to look at and there were quite a few, to be honest.

I know that other colleagues here around the table will actually be tackling some of those detailed issues, as you said, so I won't go into them. But some of them are obviously the same issues that

governments have looked at. We maybe look at them from slightly different perspectives but I think we share a common understanding of where some of these issues are. There are many common themes around consumer trust, innovation and safety.

And basically what we were looking at was we wanted the new gTLD program to work and to work well. So there are a number of parts to that. And part of having it work well is ensuring that end users understand it – soon to be a pretty fundamental consideration to us. Will end users understand what these new gTLDs mean? Will they understand that some new gTLDs are associated with brands? Will they understand that a generic market term may be a closed space or may be restricted in some way? Do they trust a domain that ends in .bank or not?

These seem to be pretty fundamental considerations to us. Obviously we will be able to rely on registrars, registries and registrants putting a lot of information out to the public. A lot of this will be marketing related, obviously, and relate to selling domain names. But we think that will be an important component in awareness raising. But there also seems to be a broader question about whether there is the need for other sorts of information to get out there, particularly to end users who are less aware of the DNS and what it means.

So some of this information could be where to go if things go wrong or if you have a complaint. Or what rights of recourse are there in situations where there may be problems that arise? So unsurprisingly, and as I'm sure everyone's aware, the GAC has taken an approach where we've

looked at some safeguards which we've advised should be considered to put in place. We wanted these essentially to be environmental settings. We looked at an approach whereby rather than having some ongoing oversight or intervention necessary, the environmental settings were set up in such a way to set up a framework for success.

So we wanted some safeguards that were going to be simple and pragmatic, that would support good actors and essentially discourage bad actors. Some of these are pretty simple – ensuring there is information out there, that registrants are advised of the relevant laws and so on, that there is good information kept and that there are processes put in place to allow for disputes or problems to be dealt with as they arise.

So where do we see all this heading? We're hoping it works and in terms of the domain name industry this is relatively straightforward – that we set up the framework, we have good measures put in place to put in a framework for success. Of course Internet is used by many people around the world and we hope that this program promotes innovation, competition, digital commerce, information sharing and so on.

And these broad clusters of interest are all component parts of the public interest. It's not easy to narrow it down to one thing. It's really very, very broad. As I've said, for this to happen we hope that we get the settings right up front. We want the framework to be established well and we hope that the Internet continues to grow and be the great success that we have come to know and love.

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And we think that ICANN is the right place for this kind of discussion. We have a broad range of stakeholders at the table and I don't want to take up too much more time, because I hope we can actually have a pretty vibrant discussion amongst this community here at the ICANN meeting this afternoon. Thanks very much.

RINALIA ABDUL RAHIM: Thank you Peter. Next I would like to invite Holly Raiche.

HOLLY RAICHE: Thank you. We will wait one second. When Rinalia asked me to present from the consumer perspective, particularly in relation to new gTLDs, what I thought about was actually rather than dream something new up, what happened at the time – and I was almost sucked it but I managed to avoid it – was a group that was set up by the Board. It was set up in December 2010 to work out, based on the Affirmation of Commitments for three elements for… The three-year targets were looking at what the public benefit was for consumers in the new gTLDs.

And the three tests were competition, consumer trust and choice. So the team got together and came up with what I think are really good tests for what, in terms of the public benefit, the benefit of new gTLDs in those three areas. And Steve's going to talk about the process itself, but what the Board wanted of this particular group was to provide the guidance for ICANN to manage and measure the effectiveness of the new gTLD program. I'm going to go to the tests and let Steve talk about the process.

Okay. What the group came up with first was what do we mean by, if we're talking about the benefit for consumers of new gTLDs, who are they? And the definition is important because it's got really two elements, but within two elements there are two further elements. It's first of all Internet users. This is not just about registrants, it's about users; both actual and potential. And it's also about the registrants, actual and potential. So it's a very broad group of people we're talking about.

And then the group had to look at what other metrics, what is it that we're going to be able to measure to see if the new gTLDs have actually been of benefit to those groups? Now, using the three headings that the Board had decided on; in terms of consumer trust – and this was defined by the group as including trust in the consistency of domain name resolution, confidence that a – and this is harking back to Peter – new gTLDs registry operator is fulfilling the registry's proposed purpose, and it's applying with ICANN's policies and applicable national laws, and confidence in ICANN's compliance function.

Choice is defined by the range of options available for consumers, for both domains, groups and languages. So this is not just about new gTLDs – it's also about IDNs and whether the new gTLDs which offer meaningful choices actually... Well, are they actual meaningful choices? And what is the purpose and integrity of the domain name registrant? And competition is also seen as something that is of benefit for the consumer – broadly defined –, the quantity, diversity and potential for market rivalry of new gTLDs.

Now, these are the metrics. In other words, the group had to grapple with how are we going to know if there has actually been benefit? What is it that we measure? What are we looking for based on those three headings? So for trust it's actually, what is the uptime for it? In other words, how often does this actual domain name work? In terms of the name itself of the registrar, have there been policy breach notices? What complaints have been received? Have they been resolved? Has there been law enforcement legal action?

You can look at all the tests but basically first of all it's is this a trustworthy new registry or not? And obviously another test is the relative incidence of spam, fraud, malware and so forth. And what was interesting was we proposed before the introduction of the new public interest commitments; are there actual policies and how do they relate to what the applicant said they were going to do?

How do you measure choice? So this is the second of the three tests that the Board had said we want to know about. Now, how do you measure choice? And in fact there are some of the obvious tests there. Some of them are geographic diversity, defensive or duplicate registrations, and Steve will explain that.

One point that Peter picked up and we did also was, I'm not sure how you measure it but the user and registrant awareness in actually understanding what the requirements are. How do you measure that? Because that's going to be important in terms of do consumers understand they have a choice and how do they make it?

Finally, competition. And there are some obvious measures. Actually how many new gTLDs are there and in terms of new gTLDs, what's the share of registrations of the new registrants. Are there unique versus total registration? And again it's going to be a hard measure, but what sort of innovation have you got with a new gTLD?

Now, there was actually a paper that's been put to the Board with a whole range of tests. We've just extracted some of them. But it was a way of saying if we were looking at the benefits to consumers of new gTLDs, in terms of the three elements that the Board suggested, then we actually have to have some metrics to measure whether that's happened or not. Thank you Dev.

RINALIA ABDUL RAHIM: Thank you Holly. Earlier when we heard from Peter we listened to the broad concerns of the GAC but he also identified the common themes of trust, innovation and safety, which overlap completely with the consumer perspective that Holly just presented and that is actually quite good, which means that the metrics is a subset of what the GAC is concerned about. And now we move onto Steve DelBianco.

STEVE DELBIANCO: Thanks Rinalia. This is the slide where I think you were going to cover what was missing, but I don't think you had a chance to. Let's in the Roundtable have a chance to hear what Holly thinks was missing from the metrics. And it's hard to think about what's missing because there's so much already in there.

Next steps. The Board asked for advice from all the ACs and SOs and on this one I had the good fortune of being in a combined Working Group with the gNSO and the ALAC, where we had Olivier, Cheryl, Evan, plenty of participation from the ALAC – we worked for nearly a year on this – and I've been told that our report is highly readable. There are folks that can digest it without ever participating and be able to do their own slides from it. So I think that's a good indication.

Next steps indicate though that we need to get moving on this, because the Board needs to react to the advice that ALAC and gNSO set up. Staff has to begin the systems to capture the metrics and at some point we need to form this Review Team that the Affirmation requires, so that they can do their work roughly a year after the first gTLD goes into the root. Matt, go to the next slide because it's a little bit easier to look at this in a timeline.

Right now we're in the middle of 2013, you can see where we all are. And you can see how optimistic I am that the Board will react to our advice with resolution and the good news is it's on the consent agenda for this Friday. So I haven't seen the resolution but I'm told that the Board will accept both GAC and the gNSO advice, which are practically identical, and the ALAC and gNSO advice, and hopefully instruct Staff to begin to gather the metrics that they need to measure that before and after.

But at the same time to launch the process of creating a Review Team. And new gTLDs are going to be delegated somewhere in the next month or two, so that process says that one year later – probably some time in

the third or fourth quarter of 2014, that new Review Team needs to be underway. So if the Review Team was formed in the next couple of months it could take a look at the reports that came out of these groups, pass judgment on whether the metrics we came up with and the definitions we cam up with are acceptable – and we sure hope they are – and at that point they can begin to conduct the actual review.

But there's quite a few steps involved and I would submit this is the most complex of the four review that are required under the Affirmation of Commitments. Now, ICANN Staff has already started evaluating many of the metrics, and we came up with 48 metrics and I believe ALAC added three or four more. And of the metrics roughly one-third of them are easy to capture and existing systems today can capture them. For instance availability and uptime statistics for a registry or for a registrar; uptime statistics are easy to get.

A chunk of them are very difficult to implement because they require new systems to code around it. And one-third of the metrics are probably going to require ICANN to do a little bit of third-party sourcing, sometimes for some development expertise but also to buy data that we don't have. Data on traffic for instance would come from a vendor like Alexa. There might even be a need for a third-party vendor to conduct a survey to determine things like do consumers truly understand what they're getting?

So surveys will be taken outside. There are metrics where we have to get information from intellectual property groups on the nature of lawsuits and UDRP proceedings. And some of the metrics involve

getting wholesale and retail pricing, and I know ICANN Legal was very nervous about collecting data on wholesale prices because they felt that was a role they're not allowed to play. We said fine; they can get someone else to gather the information and ICANN can publish it.

One of the controversies and a little bit of an inside story is on slide three, which is on the definitions. The consumer definition that Holly read out earlier focuses not on the nature of an entity, like "I am a user", "I am a consumer", "I'm a parent", "I'm a businessman", but rather on the role that one plays. So any entity can play the role of a user in that they're using the Internet, or they can play the role of registrant. And they're either doing one of two things – they're either registering or resolving, and that's how they touch the world that ICANN manages.

So when any of the entities are playing any of the other roles it doesn't matter. We didn't try to put labels on people as consumer. It's a role that we all play. The non-commercial stakeholders group is a part of the gNSO and they were active in the Working Group as well and I want to share a little bit of controversy: they throughout the process were very unhappy with this notion of defining consumer trust like we did.

Because in here we try to suggest that consumer trust is a lot to do with whether users and registrants can trust what an applicant said they'd do in their domain. If an applicant said: "I'm going to run the .bank domain. I'm only going to allow chartered banks to be here," well, that claim will lead registrants to want to put their bank there, instead of .com or .za. But it will also lead customers and users to do their banking there and have more confidence in clicking on a link that goes to a .bank.

So that trust relies upon confidence. And we said that claims made by applicants have to be enforceable by ICANN or that confidence would be worthless. And the NCSG – that's the Non-Commercial Stakeholders Group – they consider it paramount; the notion of privacy and freedom of expression, so any new compliance, any new obligations is an affirmer to them. So we work very hard to get to a consensus. We didn't get there but we had a strong majority.

And I did want to share some of the NCSG concerns. They felt that it was inappropriate to put ICANN in a role, ICANN Compliance in the role of policing these new TLDs to see if they were following the promises they made in their applications or their public interest commitment specs. And I'm seeing a lot of blank stares around the table as if, "Well, how else could it happen?" And I agree with you. You had to have ICANN Compliance move into that.

Another concern I had was applicable law. You see the applicable law is in red on here and applicable national law is baked into the DNA of ICANN. It's in the [Articles of? 00:26:10] of Corporation, it's in the Applicant Guidebook, it's in the Affirmation of Commitments, "Commits to enforcing policies subject to applicable laws," and the bylaws of ICANN. Even for ccTLDs saying: "Policies don't conflict with the law applicable to the ccTLD manager." So we held firm – ALAC and the rest of the gNSO – in keeping applicable laws in here over the objection of some who didn't want it there.

So let me transition to some of the metrics to give you a heads-up on that. The metrics we did for consumer trust included some that also

could not get the buy-in of the non=commercial. They suggested that complaints that were measured – because we wanted to assess whether Better Business Bureau or its similar analogy in other countries were getting a floor of new complaints on a registry on one of the new TLDs. We wanted to measure all that and try to assess whether the relative incidents of that, which would be the number of complaints per month, per domain registered, is higher than the same relative incidence in a legacy TLD.

So you compare them against their peers as well as the legacy TLDs that were here before the new launch, because we are trying to measure the improvement in consumer trust, choice and competition. Well, that brought some objections as well because unverified complaints are not likely to be easy to qualify, and Evan shared that concern as well. Is it that time already? Great, we'll have to pick up the rest of these items later then. Thank you.

RINALIA ABDUL RAHIM: Thank you Steve. Now it's Zahid Jamil's turn.

ZAHID JAMIL: I'm going to focus on things that are slightly high-level and look at what the issues might be, and less technical. And more of an issue, one from a business users perspective and number two, from the perspective of developing countries as well. And I've done this last time so all the things I said in Beijing that were mentioned, I won't go into them. But it's interesting to see how we got here with the new gTLD program.

We have had economic studies that have said this is an area we need to look at carefully. Not much was done after that. We've had no studies on demand, as such that's out there – that's been an issue. We've had the IP lawyers and others say that the RPMs are still not a resolved issue. We're not satisfied with it. We have developing countries still learning how we cope with the UDRP. You don't see that many coming from there.

Yet at the same time we're going to be developing so many more dispute resolution processes and making it more difficult possibly, and there's a cost implication related to it. Even WIPO has come out and said that it has concerns with respect to some of the RPMs and it's simply not good enough. And in perspective it's important to remember that the IRT, whatever it came out with, what we have today is a watered down version of it – and the IRD had said very clearly that we're just looking at the top few right now as things we need to do.

But what's required is that we be given more time to look at many of the other issues and solutions that need to be done. And that was never done, it just stopped there. We recently have had an issue with security. Lots of people are talking about the .list domains, some people have sent out letters, individually, as corporations, even from the registry side, interestingly enough, saying that there are issues here.

And we have had the SSAC come out with the most interesting language that I have seen in a long time. And I think this is pretty strong language, saying: "The SSAC believes that the community would benefit from an enquiry into the lingering issues relating to the expansion of the root

zone as a consequence of the new gTLD program, regarding stubbornly unresolved concerns about the long-term management of expansion." So that's pretty strong language and the question is what are we going to do about it? To what extent are there going to be studies and what the SSAC asks for is they need to be experts, there needs to be studies, we need to see where we can solve some of these issues.

And then you've had this interesting singular versus plural issue, the resolution of which is we're not going to resolve it. And you're stuck there. And as I said last time especially, what does that set as a precedent that people as an expectation are going to apply next time and say: "There's a word out there, there's a string out there. I just want to add an "s" to it or i want to take away an "s" from it. I have a right to be able to apply for it. Don't tell me next time I can't do that. I have a legitimate expectation."

And then you have the IDN issue. And Hong and I spoke about this last time in Beijing. It hasn't been resolved yet. We should move ahead with it but there are issues regarding RPMs and the TMCH. Now, all of these issues being there, what's started to happen is we're starting to see everybody is trying to bypass. And the gNSO came out with its policy, which was pretty thin compared to what we have today. And now we're struggling over two different issues.

One is, is it policy? Is it a limitation? Whose responsibility is it? Is the Executives or is it the responsibility of the gNSO? And there's this tussle going on every time we look at an issue. And there are times when some of the processes have to be bypassed and we have to go to the

GAC for instance and say: "There are these issues, can you help us resolve them?" Now, is that how it's supposed to be done? No. Is that the system we want implemented going forward? Possibly, possibly not. Something we need to consider.

So the issue that arises from a user's perspective is, is this process that we've entered into been well thought out? Was it driven by looking at it from a public interest perspective or maybe something else, and saying: "Well, we have to do this so let's just move ahead and get it done and we'll fix it as we go along." And the interesting thing as well while we're fixing compliance, while we're fixing IDNs, while we're fixing the dispute resolution process – we're fixing the foundations of the few TLDs we had while we're saying we're going to add about 500 stories to it at the same time.

And that to me is a concern. So it comes back to the issue I mentioned earlier: to what extent are the processes within policy working? Is it going to be about politics or is it about reaching a solution? I think since we're looking at technical areas we have to be talking about technical solutions at work and not about balancing political interests, necessarily. If it's an RPM issue, if it hasn't been resolved, it's not enough to say: "Everybody's equally unhappy so let's move ahead." That's not a solution. We're technical, we're supposed to fix the problem not say, "We've had to compromise."

So where do we go from here? Let me first raise a concern. Everybody knows the WCIT in this room I imagine, and this is the microscope under which ICANN is. The IGO/NGO issue was on a slide in an Arab Working

Group with respect to the ITU before going to the WCIT, saying: "They haven't fixed this problem. They're not protecting the international governmental organizations' names. This is a *failure* of ICANN." That little micro issue is such an important thing and that's how they blew it up. Imagine what will happen when we go riding in with 1,000 – maybe more – TLDs going into the root. What's going to happen then?

And my concern is if there will be a process of ignoring certain things like the security issue, the singular and plural issue and other things, and safeguards, some of which GAC is working on. What does that mean in the future for others out there who are watching us and saying: "Well, the multi-stakeholder system or process doesn't really work." And I don't think it's fair. The process works it's just that we need to improve certain things. Maybe the gNSO policy didn't actually at that time think of everything that needed to be thought of.

If you took somebody who was an expert in new gTLDs now and he goes back in time – and we have a lot of this about Tardis in one of our sessions, didn't we? A time machine? – and went back, and when the gNSO actually issued this policy and asked them: "Do you think this policy is [inaudible 00:34:22]?" "Not at all! This is rubbish! It doesn't take care of all the policy issues." That's why we're fighting over implementation and policy today, saying, "No, no, no, that's not implementation, that's a policy issue." Does that actually mean that we admit that we got it wrong, that we didn't do it completely?

So to that extent I think we need to look at all the areas where people are coming up with the issues and saying: "How do we improve the

internal processes of the gNSO to make sure we don't have these problems being fixed on the goal necessarily and fighting over these issues?" So those are things we need to look at and RPMs? Look, these issues of security and RPMs, both of these are important for developing countries because guess what? They don't come to ICANN meetings. You're not going to reach out to them, maybe you'll tell Microsoft: "Could you do something about the .corp issue or .list domains?"

But every developing country business that is starting itself up doesn't know this is a problem. And you won't be able to fix it in that way. So I am concerned from a developing country perspective as a business user, to what extent are there issues with RPMs, trademark protection, dealt with. Is the cost low enough for them to do this? Is it less complex enough for them to do it? And is the security implication and the cost that they're going to have to undertake, is that going to be resolved?

So I'll leave it there. I think we've covered… I wanted it to be at a high level this time and we'll take it further in the discussion. Thank you.

RINALIA ABDUL RAHIM: Thank you Zahid. Those sentiments are widely shared by many, especially in this room, and I think you said that very well. But on the question of, was the process well thought out? It's also a function of who was present to discuss it at that time, and when you're not aware of the implication of the program, which no one really could have known at that time.

It was impossible to address all the public interest concerns that have come up, which is why we're here now trying to have a broad view of what the concerns are, what can we do about it now given that ICANN is committed to implementing new gTLDs and let's see what's workable and what's not.

And a request to all discussants given that this is ICANN – lots of acronyms. I think the participants would all appreciate it if you could just say the full name of the acronyms before you start using the short terms. And now let's move onto the next speaker, which is Hong Xue.

HONG XUE: My topic is not that high level, it's a low level, it's very specific. It's on IPR and internationalized domain names. Well, this is really a test from Rinalia. You asked me to spell out all these acronyms. There is riot protection [inaudible 00:37:17] programs. In addition to the existing uniform domain name dispute resolution policy that's been implemented since 1998; the very first ICANN policy, ICANN is now doing something very enthusiastically: the protection of Internet property rights.

This first one is Trademark Clearinghouse, the second one is uniformed rapid suspension, the third one is post-delegation dispute resolution process. There are a couple of others. The one at the list… Time limit? Okay, I'll try to slow down. PICDRP means public interest commitment dispute resolution policy. Today we don't have time to talk about all these things. I want to be focusing on two things. One is very new; that's PICDRP.

The second one is very much at the center of all these rights' protection methods: the Trademark Clearinghouse. It's saying ICANN is doing these rights' protection measures very much extensively, and what ICANN's saying very interestingly is that the protection is now being extended from trademark action to the protection of the other intellectual property rights. This is interesting because they were concerned the people with these extensively growing protection measures actually put IPR's interest ahead of the public interest. And the topic of discussion today is public interest.

Let's look at this public interest commitment. This is a design of course. As a user community we always welcome the public interest commitment. The recent development is very much interesting. In order to avoid any misunderstanding or doing something pretext, I caught the whole paragraph – this is really original text. I highlighted certain words, which are now in red, and they're very, very interesting.

If there are any registries or registrar in this room I strongly draw your attention to these red characters. Think about it. What will all new gTLD registries be asked to do? They have to prohibit through their agreement with registrars to prevent domain name holders from operating certain practices, including piracy, trademark and the copyright infringement and counterfeiting.

Except Zahid and I, who are lawyers, and any other lawyer in the room can tell the difference between copyright infringement and piracy. Between trademark infringement and counterfeiting. Oh, this is very challenging. Especially as it's going beyond the law enforcements in the

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WTO trades agreements. So it seems this is very challenging for interpretation – how to assess whether it is a copyright infringement, especially through the registry's management. And the registry must take these measures because they made a commitment.

If they don't do that they will be subject to a very severe consequence including the termination of their registration agreement with ICANN. This is very challenging. And don't think these things could be very simple. Even if in your registry you know somebody is copying other peoples' work you think, "Okay, this is piracy," but you may be wrong. There are many legal justifications such as a "fair use" defense:

"I've good reason to copy that work to help disabled people." How would these registries have the expertise, the resources, the capacity to do this? What is even more concerning is that these registries and these PICs has asked to prohibit these practices. Off the top of my head I think what the names of the prohibited practices are. Is it limited to domain name strings under that registry or does it have to be extended to the [counters of bad sites? 00:41:57]?

Well, in the set of circumstances that is really disastrous. Think about it – we have a new Internet police. They are registries; 2,000 new police departments. They are really censoring the content of the Internet irrespective of their own capacity and expertize. This is a very strong concern. Most probably they are going to use DNS filtering or blocking mechanisms.

Now you can see the analysis made by a UN special reporter on this DNS filtering or blocking. Probably they will set a keyword system – anyone

with the word "Harry Potter" is either piracy or counterfeiting. They could be wrong! This is the comment on the novel of Harry Potter. What's wrong with that? So it means for this filtering system there could most probably be arbitrary and excessive. Especially as this is done by registries at an independent will – there is no judge. So this is quite dangerous.

The United Nations Human Rights Council made a resolution exactly one year ago. It made very clear that for online expressions they should enjoy the same level of protection as the offline protection. Okay. This is part of the new public interest commitment. Let's go to another measure. When ICANN is doing something very happily they refuse to react to something that really needs to be done.

This was just kindly mentioned by Zahid. ALAC made a statement about the problem of various management in the Trademark Clearinghouse with a statement in April at the Beijing meeting. They addressed a concern from a user of the IDN community. Think about the example I use here: one is Huawei, which is Chinese Cisco. It's in two origins. If it's [no management at? 00:44:04] at Trademark Clearinghouse these two would not be recognized as two – there would only be one submitted and the other would be ignored.

I will analyze what will happen in Sunrise and the claim process. But the Board kindly gave us a reply in a very busy schedule, three days ago. It says: "No action needed at Trademark Clearinghouse and the variants should be handled at the registry level." Let's see what will happen. Oh!

I've no time. Okay, I'll save the other part for discussion. Oh, I've many thoughts.

RINALIA ABDUL RAHIM: Thank you Hong. And I have to apologise to the discussants. I know each one of the topics covered deserve its own session somewhere with at least a minimum of two hours. But it's important to get the overview so that our community has a community of what's really involved. And we'll come back to you, Hong, and also to Holly on what's missing, afterward. Next speaker is Evan. Thank you.

EVAN LEIBOVITCH: Thanks Rinalia. I'm here to talk about closed generics, which isn't really a perspective so much as an issue that really illustrates what Zahib was talking about in the general thought of has this thing been sufficiently thought through when it was first done? Because here was something closed generics – and by "closed generics" we mean the idea of taking a regular dictionary word that could be a category: cats, dogs, bank, book and so on, and essentially having an applicant saying: "This is ours, we're going to have it all for ourselves. We're not going to resell subdomains, we're going to have it totally under our control."

And when a company wants to do that under their own name, like L'Oreal or Coca Cola or whatever, there didn't seem to be a problem. But when you had a company and… I guess I'll use the most obvious example because it was used in most of the correspondence to ALAC, and it was Amazon wanting .book. So forgive me if I keep going back to

this but it's only an example of what is being used generically as closed generics.

You had on one hand a belief that this was just spawn of Satan, that this was the worst thing that could happen in the domain name business; that it was cutting off opportunities to resell domains, it was going to be confusing for end users and this is something that absolutely could not have any place in the domain system. It was a grievous mistake to not consider it before the fact and something had to be done as a remedial measure.

But we found out as we were looking that there were other points of view and some of them were saying: "This is just a consequence of the bed that ICANN had already made ten years ago when it said that strings are commodities that can be owned by anyone. Nobody seems to mind that books.com was owned by Barnes & Noble. And maybe within the ICANN bubble the fact that books.com is Barnes & Noble is okay, but something.books as only Amazon's is not okay."

In the general public that distinction isn't quite as clear. So if the public is already understanding the idea that a generic word like cars.com or books.com or cars.whatever can be the ownership of a single company, that itself can claim total rights within that, but taking that up just one level to the top level, whereas in the ICANN world that's a really big deal. In the outside world the distinction isn't quite as clear.

And the ALAC statement that is up on the screen right now reflects the ambiguity. We know that there were other constituencies within ICANN that were very split, to the point where we could not have a consensus

position. We ended up coming up with one. I had to believe that it wasn't such a great idea but it wasn't inherently evil. And in fact by blocking closed generics for an entire category, perhaps this allowed a potential for some new innovations in the domain name space. For example, a company that wanted to have ownership of everything under its top-level domain but wanted to, say, lease them or rent them instead of sell them to under the top-level.

So there were other potential forms of innovation that might be disallowed, disruptive innovation that might be disallowed if closed generics as an entire category were blocked. Having said that in most cases it seemed like it wouldn't be a good idea. So the position that ALAC came up with was saying; "They're not totally good but they're not totally bad," and we came up with the recommendation that closed generics actually should be seen on a case-by-case basis.

There should be a public interest demonstrated but we didn't accept the fact that there was no potential public interest from what is called inside ICANN as a closed generic. And so we've got the same discussions going on within ALAC that are happening elsewhere, but it's very nuanced and it goes to the issue of this is the kind of thing that should have been thought of before the application came out, before the guidebook came out.

And it seemed like, let's rush it through and let's figure out how to stop the damage afterwards. And this is the kind of thing that I think is causing all kinds of problems. And closed generics to me are just a symptom of things that are happening elsewhere. I've got seven

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seconds and I wanted to use that to thank Alan Greenberg, who's in the second row, who was my co-conspirator in this statement along with Rinalia and I think we did a good job trying to get an idea of the conflict about it. Thanks.

RINALIA ABDUL RAHIM: Thank you Evan. That was five minutes. Well done. The next speaker is Karaitiana Tairuru, who is here via a recorded video. And he is going to present to us the view of indigenous groups regarding new gTLDs, and it's the first time that we've actually started to grapple with needs of the indigenous community. Matt, please proceed. Thank you.

KARAITIANA TAIURU: [Maori 00:51:06]

RINALIA ABDUL RAHIM: There are some technical difficulties. We'll go to the next speaker first while Matt tries to fix it. That will be Olga Cavalli on geographic names. Thank you.

OLGA CAVALLI: Thank you Rinalia. Thank you everyone for being with us and thanks to ALAC for the kind invitation. Thanks Olivier. Hello everyone and hello to those remote friends hearing us. I have a PowerPoint, can we load it? I used the beautiful frame that ALAC game me. Very nice colors. So I feel privileged about this issue of geographic names because I worked in the GAC when the GAC issued the GAC principles for new gTLDs that were

finished in 2007. And then I worked for the gNSO as a Council Member and as Vice Chair for four years, when the time of the gTLDs were discussed and developed. So I have some ideas that I will share with you. I'm looking forward to the discussion. It is an issue that could take the whole day.

I will go a little bit into the history of the worries of governments about using geo names in new gTLDs. This document that you can find – and I have a link in the next slide –, which is called GAC principles for new gTLDs was finished by the GAC in 2007, in the Lisbon meeting, the first meeting in 2007. At that time all the governments in the GAC at that time was smaller than now.

We had the same concern: how these geo names were going to be used as gTLDs and some of these names are clearly names that belong to a city, to a country or to regions. Some others are also generic names and some names are shared by different places and different countries. So I just copy and pasted some issues that are exactly related to geo names in this document:

"New gTLDs should respect national sensitivities regarding terms with national cultural, geographic and religious significance. They should not prejudice the application of the principle of national sovereignty and Internet naming system is a public resource and it must be administered in the public and common interest." This is what this document made by the GAC says and was accepted by ICANN in 2007.

At the end here you have the link and you can review all the information that I'm giving you. It is of course online and you can search for it.

ICANN should avoid country, territory or place names and country, territory or regional language or people descriptions unless in an agreement with the relevant governments and public authorities. This is okay but how do you implement it? Then the Applicant Guidebook time came.

During the discussions, especially in 2010, 2011, at that time I was working in the gNSO as a NomCom appointee. What is a geo name? You have to set up some rules in such a document for the applicants to know what a geo name is. So this is very briefly summarizes what the Applicant Guidebook establishes as a geo name. So you have capital cities, some cities that you want to be used as a city name for the TLD. 3166/2 as a reference for regions in the countries. UNESCO names, United Nations names.

This bunch of rules gathers approximately 5,000 names. And you would ask what happens with the rest of the geo names in the world, which of course are much more than 5,000. One very important part of the Applicant Guidebook, which I think some applicants have not read or realized that exists, says that in the event of any doubt, it's in the applicant's interest to consult with the relevant governments and public authorities and list their support or non-objection prior to submission of the application. This is common sense, as it is for me.

If you have a doubt then you will go for a name that's a well-known region. And that's not comprised in that list of five or six that I showed you in the previous slide. It could be good, and it's already established in the Applicant Guidebook that in order to preclude possible objections

and pre-address any ambiguities concerning the string and applicant requirement. This is said in the Applicant Guidebook but we already know, following some examples – one of them is the application for .patagonia that was withdrawn by the applicant on the day of the National Independence of Argentina; 9th of July. It was exactly this case. It's a very well-known region of our country; an extremely big part of Argentina and Chile.

Argentina has six provinces comprising Patagonia. It has a parliament, but for the applicant, the clothing company, it didn't match the list. So how do you complain? We have the early warning, Peter talked about it before, the GAC advice… I can never slow down, I talk too much, I'm so sorry. [laughs] Apologies to the translators, they must hate me. How do you solve that? You have the early warning, a communication to the applicant saying, "Hey, you have to review this."

And then the GAC advice… We were going through the process in the Beijing meeting and now, and then you have other processes outside of the GAC, which are the objections. Objections are expensive. How do companies or countries or developing countries or organizations that don't have enough funds…? Well, ICANN was so kind to allow one objection per country. Argentina filed an objection for Patagonia and also the Independent Objector did the same. Also ALAC had some funds for this objection.

Another issue: the company sent letters to all the countries that supported Argentina and Chile and they sent a letter saying that this trademark that they were using was registered. But this is a big

problem, especially for consumer protection and consumer confusion. Trademarks are registered under national laws and they have classes, they have categories. They of course have registered this brand in Argentina for clothing. Also they wanted to use the brand for everything that is related with Patagonia and the country denied that, they said no to that – it's clearly focused on clothing.

Do you know how many trademark are in Argentina for the name Patagonia? More than 2,000, and Chile's the same. So why would the country allow just one country having one TLD with that name? That would be confusing for the consumer and extremely unfair for the brand holders that have trusted our national laws.

Our next frontier is second level; this is our next frontier of problem. The document that the GAC prepared in 2007 already includes this prevention of countries being allowed to register at no price, in the second level, these names. I think we will very soon face this new discussion about what we can register in the second level at no price in that TLD.

And I'm looking forward to the discussion and we'll be happy to welcome you all in Buenos Aires at the next meeting. And if you need information about tourism the booth has a lot of details and maps and everything and we brought some brochures to the meeting. Thanks very much for the invitation.

RINALIA ABDUL RAHIM: Thank you Olga. Now we'll try the video again from KT. Sorry, another technical glitch. We'll go back to Matt. Tijani, do you need more time? Okay. While you get ready and sort that out with Matt I will ask Maguy to present. Are you ready?

MAGUY SERAD: You can start counting. We need the presentation up. Thank you Rinalia and Olivier for inviting Contractual Compliance to join this forum. What a passionate group of people. It's amazing to listen to the different discussions. I put this at the top here because when we first received the invite you had specifically stated it's a knowledge-sharing to explore and discuss the concerns. And from a compliance perspective, in order to be able to have this dialogue with this audience, I wanted to [level set? 01:03:22] on what it is we're going to be sharing.

Because we all know our scope is really focused mostly on the mechanism, which is number two. The policy is developed from the bottom-up, but it's the mechanisms that have been developed to address these concerns as well, that we intend to share with you in this forum today. So with me on the Roundtable I have Victor Oppenheimer. He's been leading our new gTLD effort within the Compliance Team. But of course I have multiple resources within the Compliance Team working on this effort.

VICTOR OPPENHEIMER: Thank you Maguy. Basically we have two types of provisions under Specification (11) of the Registry Agreement. Section (2) applies to

those applicants who voluntarily chose to commit to certain public interest actions. And Sections (1) and (3) of Specification (11) in the Registration Agreement would apply to all of the registry operators. So let me start with Section (2). You're probably familiar with some of the processes involved. There will be… This applies to those who voluntarily chose to commit to certain public interest actions, and the idea here is that there will be a dispute resolution provider.

There is a mandatory 30-day informal resolution period from complaint submission to ICANN intake system to the filing with the dispute resolution provider. And the idea behind doing that 30-day period is that there will be an attempt to resolve the dispute before the complainant can actually make a filing with the dispute resolution provider.

And then ICANN would be directly involved in terms of enforcement of the public interest commitments in Sections (1) and (3), those Sections would be enforceable in the formal audit, while for Section (2) there will be a complaint intake that ICANN would have to do some evaluation to make sure that the complaint is complete and can proceed to the registry operator in case there is no agreement during the 30-day period.

When we were invited there was a recommendation to talk about the PICs. We also wanted to highlight that in case of registry failure, the mechanism of choice for ICANN is the emergency interim registry operator, sometimes called EIRO, and the references are of course to Article.13 and Specification (10) of the Registry Agreement. It applies to

all registry operators and it's intended to cover circumstances when the registry operator is no longer suitable or is unwilling to continue with the operation of the TLD. So the idea is that these are interim operations until a decision is made that the registry operator can resume operations.

MAGUY SERAD: So what you just heard is very specific to the contract. What I'm going to share with you on this slide to close ties to what we hear about the measurement – how do you measure the consumer trust, consumer choice metrics. My first interaction with the Working Group was about a year and a half ago and it was very appropriate and I was very pleased. You don't usually hear much about Maggie being pleased; it's about ICANN Contractual Compliance.

But the fact that we were placed in the trust bucket I think that is very appropriate. It aligns with our vision but it's most appropriate for this because it is a trust in the DNS. And the metrics that have been displayed here are a subset. I wanted to share with you what applies today is in green. I know it's a little hard to see but the presentation is provided to you. And an extract of that is a couple of metrics from ALAC that have been submitted. We know it's still in discussion in the gNSO and ALAC. We heard the update from Steve and from Holly earlier.

However, we're not sitting silently. We have been invited to the Working Group on multiple occasions and we appreciate the invite because the last thing we want to do at the end is not meet your expectations. So please, in defining those metrics, that consultation

throughout the process has helped us meet the expectations to date, but there are still some gaps here. And Evan and I have already started some dialogue with [Barry? 01:09:02] on the definition. So we are proactively looking at how we can measure today and in the future, in order to report on those metrics. So with that Holly I close.

RINALIA ABDUL RAHIM: Thank you Maguy. Certainly the dialogue is very good, especially if you come up with an agreeable, workable solution for all parties concerned. Tijani, are you ready? Please proceed.

TIJANI BEN JEMAA: Good afternoon everyone. I will speak about the current issue related to the participation from developing countries in the new gTLD program. Okay. So Section (3) of Article (2) of the ICANN bylaw says that ICANN shall not apply its standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

Speaking about the new gTLD program, I unfortunately cannot say that the developing region were treated inequitably with the developing world. We can easily say that disparate treatment has been done that didn't promote the effective competition. Let's first see what happened. Of the 2,000 applications for the new gTLDs, less than 1% came from Africa. 1.25% came from Latin America and the Caribbean region. 16% from Asia Pacific. 35% from Europe and 47% from North America.

Only three applications for support were received while we had the possibility to support up to 14 applicants. And only one of those three applicants has been supported; the others have been rejected. In short, while we have the resources to support 14 applicants only one will benefit from this effort. Why is it so? First of all because since the beginning the cost recovery requirement leading to an application fee of $185,000 made the program inaccessible to the southern regions and the poor communities.

The creation of the JAS Working Group in December 2010 made us hope that things would be better and that the southern region would have a chance to participate. About two years of hard effort resulted in recommendations including the fee reduction from $185,000 to $47,000 for eligible applicants. An applicants support program has been created and ICANN put $2 million to support up to 14 applicants.

But the $47,000 remained a barrier for most possible applicants of the developing world. Another reason for that was that one of the community concerns was outreach. The new gTLD program should be popularized, promoted and advertised prior to the opening of the first round of application, and so should the applicant support program. The outreach for the new gTLD program started late and reached especially the north. Only online outreach was provided to the developing economies. No outreach at all was done for the applicant support program.

So I [inermerited? 01:15:16] here only the reasons related to ICANN. There are other reasons for this situation. So, what to do? How can we

overcome this situation and give opportunity to the under-served communities to be part of the new gTLD program? First, the application fees for the upcoming regular rounds should be much slower, especially because the cost recovery has been done and ICANN recovered its expenses related to the development of the new gTLD program. The outreach should start early, enough to permit and good appropriation and should be directed more specifically to the developing regions using the appropriate tools.

The application support program should be continued or facilitated by putting more resources to help more applicants from the south and the poor communities. Also by reviewing the criteria for eligibility to the support so that the real needy applicants can benefit from this program. In the meantime, and to catch up the lag, a round dedicated to applicants from the global south and poor communities should be organized before the regular second round of application. Thank you Rinalia.

RINALIA ABDUL RAHIM: Thank you Tijani. Do we know if there will be future rounds of new gTLDs?

TIJANI BEN JEMAA: There will be but we don't know when.

RINALIA ABDUL RAHIM: Thank you Tijani. This is indeed interesting news. Thank you Tijani and now we're going to try again one final time; no video but we have the text because we anticipate there will be problems. So we've tried everything and I've asked Olivier to read out the crucial parts of the message from Karaitiana. Olivier?

OLIVIER CRÉPIN-LEBLOND: Okay, this is rather interesting. Good afternoon everyone. I've been given the unenviable task to read through this text at the very last moment. But, hey, let's do it. There is an even more unenviable task, which is to be in the booth to interpret what I will be reading. So that's the text from KT from the Maori islands? From somewhere in the Pacific Islands. Indigenous issues with new gTLDs. So I've been given five to seven minutes to raise issues that could take hours to explain and many more hours to debate and discuss.

So this is rushed and very high-level while missing out many other issues. It could be argued that ICANN have created a potential for a global digital divide with the new gTLD program and that it may offer a high risk of infringing on cultural and economic rights for indigenous peoples' intellectual property by entrepreneurs and multi-national corporates. I can finish the introduction and then we'll go over to the blank screen.

Currently the Applicant Guidebook also allows anyone with enough money to purchase and protect their brand and identity including city and geographic names, but little consideration is given for indigenous peoples' cultural groups to have the same protection for their brand and identity. So I have been asked to address three questions. The first one

is: what are the consumer and public interest concerns in relation to the new gTLD program? The second one is: are the policies and mechanisms that have been developed to address these concerns adequate? And the third one is: what more needs to be done to address these concerns effectively? And I wonder whether I will say it on video or through Olivier reading my text.

KARAITIANA TAIURU: It's Karaitiana Taiuru here from the New Zealand Maori Internet Society. We're an ALS of APRALO. I've been given five to seven minutes to discuss issues that could take hours to explain and many more hours to debate and discuss. So this is rather rushed and very high-level. Now, it could be argued that ICANN have created a potential for a global digital divide with the new gTLD program and that it may offer a high risk of infringing on cultural and economic rights for indigenous peoples' intellectual property by entrepreneurs and multi-national corporates.

Currently the Applicant Guidebook also allows anyone with enough money to purchase and protect their brand and identity including city and geographic names, but little consideration is given for indigenous peoples' cultural groups to have the same protection for their brand and identity.   Now, I've been asked to address three questions.   First question: what's the consumer public interest concern in relation to the new gTLD program?

Now, I will go into a bit of background here first. Now, it's a common fact that domain names contain high economical value and are often referred to as virtual real estate. The non-financial benefits of domain

names are the facts that indigenous people and cultural groups can use domain names as a virtual identity to promote their language, culture, identity, intellectual property rights – all of which in turn raise the social and economic status in the physical communities. Now, it's also a vehicle to bring physical community to the virtual community and to create a virtual identity that reflects a physical identity and protection mechanisms to its people.

Now, indigenous TLD, gTLD and ccTLD issues are nothing new and historically indigenous peoples of North America have made cases to the late Dr. Jon Postel and ICANN for the creation of a sponsored indigenous TLD, .naa; the North American Aboriginal. Now, the new gTLD Applicant Guidebook seems to ignore all of these issues I just mentioned. Here I must also acknowledge the work of [Eric Bryant Williams? 01:22:15] of [NARLOW? 01:22:19] and many others in the past who have already raised these issues and have been in discussion within the various hierarchy of ICANN.

In 2009 there were talks happening around the creation of a new gTLD, .indige, which would have been a gTLD for indigenous peoples of the world to help them ascertain self-sovereignty within their own identifiers on a cost basis. Now, the key message that we received from these talks was a global indigenous problem is occurring and has been ignored by the likes of ICANN.

Generic names… There is no protection preventing cultural groups and indigenous peoples' collective names from being registered. Examples are .indian, .pacific, .maori, [.apechi? 01:23:08], .comanche etc., some of

which we're already seeing being registered in the first round of new gTLDs, including .zulu. The issue here is who has the right to claim the identity for an indigenous group for the purpose of a gTLD?   At the moment there appears to be very little protection.

Now, if a commercial entity were to register an indigenous name as a gTLD, this would remove the very last option for an indigenous identity in the DNS. We've already seen how this can occur with .patagonia, of which the issue was raised in the GAC and it's highly likely that an indigenous name would be noticed if it was also being raised. Indigenous peoples have issued as ccTLDs despite the fact that sovereign nations and many other indigenous peoples were the first inhabitants in their countries of residents.

Many indigenous peoples were colonized. So in relation to ccTLDs this means that indigenous peoples are bound by the RFC 1591, which prevents indigenous peoples who live in a colonized homeland from being recognized.   The other issue is that prior to countries being colonized, indigenous peoples had their own names for their countries and these names are likely to be in use within the indigenous population now. For example in New Zealand the native name for New Zealand is Aotearoa, and it's commonly used in the [jewel? 01:24:33] as Aotearoa, New Zealand.

Now, it's also of argued that indigenous peoples can use the space within their own ccTLD. But this has only occurred with two indigenous groups; native sovereign nations and Maori. For at least Maori this is a time consuming and very expensive process that only meets the

minority of the identified issues. Yes despite Maori being the official language of New Zealand and the fact that the New Zealand government are bound by a treaty to ensure equal rights and that indigenous protections are in place [inaudible 01:25:04] to Maori, this does exclude the DNS as it's not governed by the New Zealand government.

So the new gTLD process doesn't consider any of those previous issues in regards to indigenous names of countries and places. The second question I've been asked to address is: are the policies and mechanisms that have been developed to address these concerns adequate? There doesn't seem to be any consideration of indigenous rights within the dispute mechanisms in the gTLD process.

The third question I was asked to address is: what more needs to be done to address these concern effectively? I would suggest that an indigenous cultural group representation needs to be heard throughout all of ICANN's structure. An Indigenous Review Team needs to be established to review the gTLD Applicant Guidebook to ensure global indigenous issues are considered in all aspects of the new gTLD process.

An indigenous rights review of the rights protection mechanisms is undertaken. A pool of indigenous experts to consult and consider indigenous rights. Linguist issues of indigenous languages need to be considered. Already we have an issue of a Polynesian language that uses a glottal stop can't use the glottal stop in IDNs nor would they be able to use them within any proposed gTLDs. ICANN could adopt or adapt the UN Declaration of Indigenous Rights and be a better global citizen. And

finally, perhaps ALAC could create an Indigenous Working Group to address these issues. Thank you for you time.

RINALIA ABDUL RAHIM: Thank you KT. What is in a name? It's everything. It's identity, culture, so many different things and that's why so many people get so emotional about names. And we are talking about thousands and thousands of them. Anyway, so now we come to the discussion component and we heard earlier about the range of issues – and they are quite wide. We have heard about issues of inclusion, rights, trust, safety, innovation, choice, competition, the importance of meaningful understanding, the design program implementation, not dealing with problems and issues properly… So many issues.

And the policies and mechanisms that were brought up tend to be tied to a specific acronym – that's how you know that they are mechanisms. Some of them are considered to be insufficient, inadequate and there are probably more that need to be developed. So let's discuss that and identify what's missing and what could be done. And I'm going to ask Olivier to help me moderate this session.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Rinalia. I'm glad that KT managed to come on screen because my delivery of his points was probably much worse than the way that he managed to drive them. So we have Holly first in the queue and I see Steve DelBianco, Zahid Jamil. So Holly is pointing to

Steve, Steve is pointing to Zahid. One of you three please start with the microphone. Steve DelBianco?

STEVE DELBIANCO: Thanks Olivier. There are many things that we will assess, both as it's happening and then one year later through the affirmation review. And a lot of the things brought up today are going to be assessed if the Affirmation Review Team uses these metrics. Because we'll look at things like geographic diversity and try to assess whether it's there. We'll have more than enough things to measure later. I want to try to avoid creating a crisis out of something that was said earlier.

Hong Xue, your interpretation of the GAC's safeguard advice on Terms of Service I think was a misinterpretation. We can clear it up right now and avoid a crisis that started in this room an hour ago. You brought up and interpreted that registries would be responsible for policing the domains that happened to register in their TLD. Well, the good news over your concerns is: relax, because all that the GAC asked for in that safeguard was that the Terms of Service that are shown to a registrant have to indicate that the registrant is subject to applicable laws.

That the registrant is prohibited from malware distribution, from piracy and intellectual property theft. So all that the GAC asked for and that ICANN has already agreed to is that every new TLD in its agreement with registrars has to force the registrars to put a Terms of Service in front of every single registrant and the registrant has to click the "I agree" button before they get their domain name. That is not an active obligation to police the space or notice and take down or all the things that you imply.

So I wanted to set the record straight on that because we have more than enough problems that to have created a brand new problem that isn't really there.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Steve. Zahid Jamil?

ZAHID JAMIL: It's interesting, right? Everywhere you hear you don't hear anybody say: "Oh, this is such a great idea, we're going to do this, this is why it's wonderful…" You keep hearing all these other things. It's interesting. So I just wanted to… What I said earlier was all the issues we had with the new gTLD program and one of the things I unfairly didn't do was, what do we do about some of the issues I've raised?

One: this gNSO review that should be coming up it should happen and the focus should be that the voting structures need to change, because that's one of the problems that at least we feel is why many of the things we're trying to put out there and are trying to fix aren't happening. That's why you're getting the bypassing, that's why you're having to go directly to the GAC for instance and things of that nature.

Second: something that Holly and Steve said, which is interesting; the whole consumer and public interest aspect. Any action anybody takes anymore you should ensure that one of the criteria is to do something that is closely linked with the public user interest. Why are we doing this? Not just because it's a great idea but because it has to be linked to that criteria.

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Third – and this is much more immediate; these are things we should aim towards –: All the things we've been talking about we need to take a look and say: "We'll fix these problems and if we're going to go ahead with the new gTLD program we need to do it in a proportionate, measured, responsible and in a manner that mitigates risk."

Because take these sorts of issues that come up in the banking industry, I think a lot of people would have found that they'd be on their way out if issues of security and things of that nature were being found out about later. So we need to take this very seriously and say let's do this in a measured way. Let's not do these thousands of TLDs coming out at the same time.

OLIVIER CRÉPIN-LEBLOND: Thank you Zahid. Anyone else? Holly Raiche?

HOLLY RAICHE: I think we've covered all of the unsolved issues as well as the solved issues. I want to know where we're up to with the metrics because I really think it's very important for them to be in place. My understanding is we haven't got final Board approval. I think we need that because we need to know if we do proceed, is it going to work in the public interest?

OLIVIER CRÉPIN-LEBLOND: Well, is it?

STEVE DELBIANCO: The timing is essential. It won't take as much as a year to build all the systems to capture the metrics. And when the new Review Team is appointed – and each of us has a role in appointing new Review Team Members – the Review Team will come together and they'll look at the ALAC/gNSO metrics, there's 48 or 52 of them in there, and they may pick some, all or none of them and they may add their own. They may not even use our definitions.

So this could create a situation where it might take the Review Team several months to come up with its own. At the end of that point in time they will turn to Staff and Staff will support them by developing the metrics. For all that to work it's very unlikely that you'll be able to look at before and after metrics, because if you don't come up with your metrics until late 2014, who can say what the world was like prior to the launch? And it will be difficult to measure progress over time. Olivier, you recall many of our metrics and Evan, they measure progress over time to say that things are improving or they're trending up or trending down. Those trends will be lost if we don't get started quickly.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Steve. I'm going to pass it over to Evan and then we'll have Hong. But I'm also going to ask if anybody from the audience, who's sitting behind me – and unfortunately I've lost my third eye – to put their hand up and Carlos Reyes can come over to you and let you speak. This is a dialogue with everyone here, both at the table and in the audience. Evan Leibovitch?

EVAN LEIBOVITCH: Thanks, and I'm goin to continue on what Steve was talking about but give a slightly different perspective and that is, if ICANN doesn't get its metrics right somebody else will, and the somebody else will ask the questions and frame things differently in a way that may not look so positive. If it comes across… And this is one of the things that I've found in my dealings with the group – that there is a real fear that if they're not done right the numbers can be taken to look self-serving.

And if that is even a perception then somebody's going to say: "ICANN's just trying to justify its own activities." And if that isn't seen as fair, if it's not seen as balanced, if it's not seen as complete, then you're just going to say: "Well, this metrics thing was a marketing exercise and somebody else has to go and do something more objectively." Of course, it won't be more objectively, it will just be from some other bias.

And that's one of my concerns. And it's one of the reasons why it was important for ALAC to try and flesh out parts that we thought needed to be completed, because if it was seen to be incomplete or that the only things being cherry-picked were those that were going to make the system look good, then it was essentially leaving the entire program open for attack by somebody that would try and do it differently.

And by someone that would come up with perhaps numbers based on a different bias, a different perpective that would probably be just as bias in some other direction. So my hope was for ICANN to do it fairly and so it would have the respect necessary that nobody could claim, "Well, it was self-serving." Thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you. Next is Hong Xue.

HONG XUE: By further explanation about public interest commitment, of course I understand how this management works; it means a registry made a commitment, and agreement with ICANN, and in that commitment it's agreed that it will require each registrar to include that paragraph I quoted in the domain name registration agreement. Of course that's how the system works – ICANN is not a government, it's not a law-enforcement agency. How it can enforce this policy is only through the contracts.

But I don't believe my concern can really be relaxed. Especially as we have to put these rights protection measures in the holistic approach or think about for the UDRP a treatment owner can only sue against a domain name holder. It cannot sue against a registry or registrar.

But look at this public interest commitment and this dispute resolution policy. If a copyright owner is really not happy with the copyright management in a TLD, it can actually sue or complain under that Dispute Resolution Policy, because the registry had made a commitment with ICANN and is subject to ICANN contract compliance.

We've heard this from the two Officers from ICANN. In addition we know in the right protection measures of new gTLDs there is a post-delegation dispute resolution policy and in that one it's pretty clear, at a second level, if a registry failed to discipline those second-level domain name strings and has resulted in trademark infringement, that registry

will be sued and in the most circumstances the registration agreement could be terminated by ICANN.

What I'm concerned about is whether ICANN, through this new PICDRP to extend that measure under the PDPRP that is only applicable to trademark, to copyright. This is a serious concern. Oh, if it's a perfect world and nobody uses this dispute resolution procedure and there's no real case, well, that's perfectly wonderful. It's only mere assertions. But whatever [at its teeth? 01:38:47] and is going to be enforced in reality?

OLIVIER CRÉPIN-LEBLOND: Thank you Hong. I think Zahid wanted to respond directly to this point please?

ZAHID JAMIL: Thank you Hong, thanks a lot for that because one of the things we were looking at, both in the IRP and afterwards and in the [STR? 01:39:02] when we never got an opportunity to look at the post-delegation dispute resolution procedure, and there's been a lot of talk about it, was does this apply to individual breaches within a registry or not? And I think what you're pointing out is that if there's a breach, if there's a violation of trademark or copyright or etc., an individual one, then the registry could be taken to and have its contract cancelled by Contractual Compliance.

And we'd love it as a trademark [law is? 01:39:34] necessarily – it would be great if we could actually make that happen but actually that's not unfortunately what's in the PDPRP. The PDPRP says two things. One:

there has to be systemic; the registry has got to show that it's doing this on a massive basis. And we didn't even get what we were looking for to say, well, if you turned a blind eye to this activity we would still be able to ask you to be under contractual compliance and go to the PDRP. Even that we didn't get. So it's something actively that the registry has to do that promotes trademark or other infringement.

And secondly the only person who can take them to court, in a sense, is not the trademark holder. It's going to be ICANN, Contractual Compliance, I would imagine. So it's not necessarily going to be under PDPRP, the person who is the trademark holder who's going to take them into PDPRP, it will be ICANN because it's a systemic issue within the registry. So that's an important distinction. So hopefully that doesn't cause the kind of problems that you're mentioning.

But I take your point that it's important that whatever Contractual Compliance does it doesn't do overkill in what you had actually put up there. I think that's a fair point that has to be taken on board. But on the issue of whether we can take them to court as users… Well, no. It's going to be Contractual Compliance, and secondly, it's only if it's a systemic, registry-wide abuse.

OLIVIER CRÉPIN-LEBLOND: Thank you Zahid. I realize we do have a dialogue going on here but there is also a queue. So we'll try with the queue and then we'll hold onto the dialogue and perhaps have some conversations in parallel, I guess. The next person is Kristina Rosette.

KRISTINA ROSETTE: Hi, Kristina Rosette, Council for Patagonia Inc. I just wanted to note that I'm available to speak to anyone… I don't want to take up time during the panel but there were some inadvertent misstatements made about Patagonia's trademark rights, its application and the process post-early warning. I'd be happy to discuss those with anyone of interest and of course you can access its response to the GAC advice through the ICANN site.

I would just note however that I think if this issue is going to be taken up before the next round, if there is one, of new gTLDs I think it really will be incumbent on the community to ensure that all GAC Representatives are fully and actively participating so there are no subsequent surprises.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Kristina. We have a queue with Olga and then Maguy Serad. First, Olga Cavalli.

OLGA CAVALLI: Thank you Olivier. I think that Patagonia was a fantastic issue for our region. For the first time I could convince some other colleagues from the region to come to the GAC meeting. We have Peru, we have Paraguay, we have Chile, we have Brazil, as usual, we have Argentina and we have others participating remotely as well. So sometimes adversity brings volunteers together.

And also for the first time after many years working in ICANN and in the GAC we have been working coordinately and this worry that Argentina and Chile has for Patagonia is not only from our two countries. It was addressed as a regional preoccupation from the whole Latin America and Caribbean region in the last fourth ministry conference in Montevideo. So I think it was good that life is like that. Bad things come from something. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Olga. And I remind everyone in the room they are entitled to speak here, both at the table and in the audience and we'd like to hear more from the audience, perhaps even also from remote participants who are following along. You can type your questions or your comments in the chat box. Next is Maguy Serard.

MAGUY SERAD: Thank you Olivier. You had asked when you started the facilitation to address what's missing and what can be done. What I would like to suggest for Steve and for Evan, from a Working Group leads for the metrics… We've collaborated in the past to clarify and define further, but what's missing from the list I've seen is a prioritization. What is critical in these metrics. You listed 48 and there are a lot of metrics out there.

So what should be done would be a prioritization based on the criticality and urgency of those metrics, because we cannot have everything immediately – to your point. So the prioritization coming from the

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teams who are proposing the metrics with a clear definition will expedite the process into implementation.

OLIVIER CRÉPIN-LEBLOND: Thank you Maguy. I imagine Steve DelBianco might have an answer for you.

STEVE DELBIANCO: A very quick reply. For the Review Team what you would do is make sure that in each category you take at least a few of the questions, a few of the metrics, from each section in gray, because we broke them up into subsections. You would never just take the first five from trust and the first five from choice. But none of those decisions are up to us.

As you know, the Board will launch the new Affirmation Working Group. It will take several weeks to form the Team. The Team will determine what metrics are to be used, not us. We wrote the documents in an effort to answer the Board, because they wanted to begin measuring things beforehand. But we cannot tell you what priority that that Team will pick – that is still months away.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Steve. Another one?

STEVE DELBIANCO: I wanted to respond to a general comment. Zahid said: "Why are we doing this? There are so many problems, why are we doing this?" I

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testified in the US Congress at a hearing where a lot of big brands were and others who also pointed out all the problems of expanding the new gTLD space. And in a moment of frank honest I said: "Look, this is the Internet. The Internet has always been about unbridled innovation. You don't ask a permission slip to put up a website. You have a great idea and you try it, you throw it out there and see if it'll work."

The Internet has always been about experimentation, trying things and growth. And it's completely unnatural to say: "Oh, we've got 22 gTLDs, we've got 300 ccTLDs. I guess we're done." How does that fit with the Internet psyche? It doesn't fit at all. So the first argument is, why would we say that we are done with 22 gTLDs?

Another is that there is genuine innovation that can be done with new gTLDs. And .bank, if it's done the way we all envision, will dramatically reduce the amount of phishing fraud that happens with people that bank. And there may be other forms of innovation coming too. I don't know. But why are we doing this? I think to say we have to do it to say that we're done with the domain name space makes no sense at all.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Steve. I wonder if there are any registrars or people from the registrar or registry community in the room? It would be interesting to hear from them. We'll have Evan Leibovitch in the meantime if anybody wishes to comment. I'd like to have a bit more audience interaction. Thank you. Evan?

EVAN LEIBOVITCH: Actually, so would I. First of all, Maguy, as Steve said, when we don't even know what's going to be accepted and rejected right now, prioritizing the stuff that's on the table is almost – I daresay – a waste of resources, since we don't even know what's going to be taken up. So I think when the powers that be determine what's going to be used I think we'll all be more than happy to work with them to figure out what needs to be done first, what needs more resources and so on.

In terms of… Anyway, I need to think a little bit more about my point.

OLIVIER CRÉPIN-LEBLOND: [laughs] Goodness Evan, is it that 4 o'clock time? Yes it is, okay. Fatimata?

FATIMATA SEYE SYLLA: Thank you Olivier. For Africa I think the new gTLD program brought a new momentum among the various governments, because they're now interested in really looking into what's happening in ICANN. And working together… I mean, we just attended a meeting this morning and they were talking about how each country should be looking at the names that we'd like to reserve, and also civil society and everybody working together to push forward and to develop the new gTLD industries in Africa.

And also registries and registrars are now working together. I think it's a great momentum for Africa right now to push forward in this program and it's an opportunity I wanted to just let you know about.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Fatimata. Evan, did you get your words back in order?

EVAN LEIBOVITCH: Yes I did, I remembered my point. Steve, I was trying to pick up on what you were saying before about, okay, let the ideas come or as Avri keeps saying, let 1,000 domains blossom, and so on, and see what happens and see what comes out of it. I think part of my concern – and maybe this goes back to some of the discussion we had about closed generics – is, okay, let 1,000 things bloom but then there seemed to be some kind of artificial measures that were put on top of it.

Some of it was dealt with the vertical integration issues, right? And the issues of open access – does the registry have to sell through every registrar? And at one issue here at a business level there was a lot of sense to it, but… I'm certainly not a registry but if I was thinking like one I'd say: "Well, why don't I want to be able to pick and choose who I want to sell to?" And so when you had this issue of open access it was either "open" or "closed" and it was a binary decision with no potential for innovation in the middle.

This is where I saw some flaws in what I thought was, well, let all these ideas come out. But then there seemed to be some artificial restrictions on just how innovative those ideas could be. And I think that put a little bit of a dampener on it – at least from what I saw. I don't think we'd be having this debate over closed generics if there was really a continuum

as opposed to say just a binary choice of "it had to be here" or "it had to be here".

OLIVIER CRÉPIN-LEBLOND: Thank you very much Evan. I see Steve nodding. Steve DelBianco? I guess we can go for a round of "last few words" if anybody wishes to have a last statement. Steve, go ahead.

STEVE DELBIANCO: One of the metrics we didn't discuss was on choice and competition. The words choice and competition were almost ambiguous. The Working Group had to come up with a way to distinguish them. So we made choice about whether I could find the scripts and languages that I wanted. We made competition about the supplier but there is a hole chunk of metrics in there for them that would amaze you.

We measure what is not choice. We said: "It is not choice if a registrant has to go into Sunrise and keep buying the same domain name in 600 different TLDs to defend their brand or to prevent their consumers from being confused. They're not making a choice if all they're doing is registering during Sunrise and redirecting the website to their original site. They're being backed into the process of having to do defensive registrations.

So this was a controversial element in our metrics and it made it tough to get through the contract party side of gNSO, but they approved it – that it is relevant to take a look at the quantity of so-called "defensive registrations" because that's not a choice at all.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Steve. We have somebody from the audience, [Tariq Marani? 01:52:05]?

SPEAKER: Hello everybody. I just wanted to talk about the African new gTLD program. I am [Tariq Marani?] from [inaudible 01:52:23] ccTLD of Sudan. Hello? Yeah. When we started this project of new gTLDs, especially .africa, we hoped that everyone in each of our countries and cities and organizations in Africa would have a name ending with .africa. But what's happening now will not lead to this. Now when someone wants to get a .africa domain he must be outside of Africa; in Europe.

Why? Because of the registrars problem. In Africa there are very few registrars. Not everyone in Africa can reach them. .africa is a new gTLD and that means registrars should be ICANN-accredited registrars. And we know that the problem of small companies in Africa cannot meet the conditions to be accredited by ICANN. We talked about, for example, .eu in Europe. It's not considered a gTLD, I don't think; it's considered a ccTLD, something like that. So they can get their own Accreditation Agreement with others and create registries themselves.

We want something like this for Africa because we need to have a registrar or a reseller inside each country so that everyone can have a domain. And the way it is now they cannot have a domain in .africa because they don't have credit cards and they can't buy from registries in Europe or the US and those who will sell .africa, because there are no

registrars inside Africa. So we need something or ICANN should think about a new agreement, a new RAA in Africa.

Because Africa contains smaller companies or they don't know that there are other solutions, like the vertical integration for the registry on .africa, so that they can have registrars and have resellers in each country. We have to find a solution or if it stays the way it is now the domains in .africa will only be sold in Europe or the US and not in Africa. Thank you very much.

OLIVIER CRÉPIN-LEBLOND: Thank you very much [Tariq Marani?]. And I wished you had come in earlier with this so we would have been able to discuss this in more detail. I think that either Tijani or Fatimata might wish to speak to this because I do know there is work going on with this… Fatimata?

FATIMATA SEYE SYLLA: Thank you Olivier. Thank you Tariq for raising this issue. But I think right now what we're doing within Africa is really to work together to find solutions instead of waiting for a solution from ICANN itself. ICANN is supporting Africa, for sure, but as Africans we're really working hard together to find solutions by ourselves and in partnership with other stakeholders like AfriNIC and ISOC and the other African constituencies working to develop the Internet.

So right now I think we don't have the right solution, but we're working towards the solution and we're even thinking about using the mobile payment system to see how we can develop it. And we're also working

out how we can build partnerships with financial institutions like the African bank and so forth. So we're working together but I think we, as Africans, need to work more and we need to find the solutions ourselves, of course this would be in collaboration with the other stakeholders worldwide.   But we cannot wait for ICANN to find the solutions for us. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Fatimata. Okay, Zahid, you have the last word and then I'll hand the floor back to Rinalia. Zahid, go ahead.

ZAHID JAMIL: It's an interesting concept; something that was mentioned to us by the penultimate intervention. It's interesting – look at the situation as it's changed, once a new gTLD's launch.   Your primary identifier for a business on the Internet or even otherwise was basically a second-level domain name, which was less than $50 sometimes. Right? Now there's a difference. If you were going to be considered a serious, big company you're going to have to put out $185,000 and much more than that. What does that do to the digital divide?

OLIVIER CRÉPIN-LEBLOND: Evan needs to respond, so, Evan?

EVAN LEIBOVITCH: I would contribute to that the fact that we've now seen a couple of .brands dropping out. I believe GM did, L'Oreal took out their .brand, so

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I think we're starting to see a number of high profile companies saying even in the north that they don't need to play that game.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Evan and back to you, Rinalia, for closing this meeting.

RINALIA ABDUL RAHIM: Thank you Olivier. I would like to thank every one of you for participating in this Roundtable. It was an experiment on our part to actually try to look at the new gTLD program from a higher level and see if there are commonalities of interest in terms of concerns from the consumer point of view and from the public interest point of view. Now, I know that public interest is something that is defined differently by many different people and I know that within ICANN they are trying to have a clear and shared definition of public interest as one of the projects under Sally Costerton.

So we shall see how this project rises out; whether it is engaging all the communities and whether we can actually come to a consensus on this point. And on that we will have a watching brief. And I hope that our Roundtable today will lead to further collaborations in terms of mutually supportive advocacy on the part of the GAC, the Business Constituency and the ALAC and other stakeholder groups, because I think that will serve to promote the interest of users, of consumers and the public interest. Thank you.

[END OF TRANSCRIPT]